

## REMARKS

Claims 2-9, 12-23 and 36-41 are pending in the application. In the office action dated November 21, 2003, the Examiner to following action: (1) rejected claims 2-3, 5-9, 12-13, 15, 18-21, 36-38, and 40 under 35 USC 102 (b) as being anticipated by Kuevers (U.S. 4,938,477); (2) rejected claims 36 and 41 under 35 USC 102 (b) as being anticipated by Schiavone (U.S. 5,462,508); (3) rejected claims 12, 14, 19, 23, 36, and 38 under 35 USC 102 (b) as being anticipated by Evans (U.S. 5,120,052); and (4) rejected claims 4, 16-17, and 22 under 35 USC 103 (a) as being obvious over Kuevers. Applicant respectfully request reconsideration.

### I. Rejection of claims 2-3, 5-9, 12-13, 15, 18-21, 36-38, and 40 under 35 USC 102 (b) as being anticipated by Kuevers (U.S. 4,938,477).

Kuevers (U.S. 4,938,477) teaches a wrist engaging exercise device. As best shown in Figures 6 and 7, a user places their wrist with the inside of the wrist resting upon a pair of foam pads 22. (3:40-41). An adjustable pad 25 mounted to a plate 26 is then engaged against the top of the wrist as shown in Figure 7. (3:43-45). As best shown in Figure 6, the thickness of the compressible pad 25 is uniform. In operation, movements of the wrist cause balls within the device to move, creating a constantly changing strain on the muscle groups of users arm. (3:50-60).

Kuevers fails to teach were fairly suggest a pad assembly as recited in amended claims 6, 12, 19, and 36. Specifically, Kuevers fails to teach a suggest a pad assembly including a compressible layer *having an uncompressed, non-uniform thickness*, (e.g., Application Figure 3, surface 68, and age 8, lines 11-15) and an elongated plate member of approximately uniform thickness having front and back surfaces, and wherein the front surface of the elongated plate member is shaped to provide *an approximately uniform-thickness compressed portion of the compressible layer when a compression force is applied* to the first surface during an exercise. (Emphasis added). The claims therefore recite a compressible layer having thickness characteristics that are exactly opposite to the thickness characteristics of the pad 25 taught by

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Kuevers. On the contrary, the pad 25 of Kuevers isn't uniform thickness and an uncompressed state. During an exercise, the pad would be compressed into a nonuniform thickness. Therefore, Kuevers does not anticipate the apparatus and methods recited in claims 6, 12, 19, and 36.

Claims 2-5, 7-9, 13-18, 20-23, and 37-41 depend from claims 6, 12, 19, and 36, and are not anticipated by Kuevers for the same reasons, and also due to additional limitations recited in those claims. Therefore, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 2-3, 5-9, 12-13, 15, 18-21, 36-38, and 40 under 35 USC 102 (b) as being anticipated by Kuevers.

II. Rejection of claims 36 and 41 under 35 USC 102 (b) as being anticipated by Schiavone (U.S. 5,462,508).

Similarly, Schiavone (U.S. 5,462,508) teaches exercise device having pad assembly's then engage a user's shoulder. As best shown in Figure 3, Schiavone teaches a uniform thickness rubber cushion 40 mounted to an inner side 36 of the shoulder engaging member 32. (3:35-40).

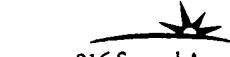
As described above with respect to the patent to Kuevers, Schiavone does not anticipate the apparatus and methods recited in claims 36 and 41 because during compression, the uniform thickness rubber cushion 40 would be compressed into a non-uniform thickness portion rather then into a uniform thickness portion as recited in those claims. On the other hand, claims 36 and 41 recite that the compressible layer has a nonuniform thickness in an uncompressed condition, and that in a compressed condition, forms and a uniform thickness portion. The claims therefore recite a compressible layer having thickness characteristics that are exactly opposite to the thickness characteristics of the rubber cushion 40 taught by Schiavone. Thus, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 36 and 41 as being anticipated by Schiavone.

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III. Rejection of claims 12, 14, 19, 23, 36, and 38 under 35 USC 102 (b) as being anticipated by Evans (U.S. 5,120,052).

Similarly, Evans (U.S. 5,120,052) teaches exercise device having a pad assembly that engages a portion of the user's body. As best shown in Figure 1, Evans teaches that the pad assembly includes a retainer carriage 24 made of metal that is concave, and a retainer padding 26 of foam rubber formed on the concave side of the retainer carriage 24. (3:22-47). As shown in Figure 1, the retainer padding 26 isn't uniform thickness.

Evans does not anticipate the apparatus and methods recited in claims 12, 14, 19, 23, 36, and 38 because during compression, the uniform thickness retainer padding 26 would be compressed into a non-uniform thickness portion rather then into a uniform thickness portion as recited in those claims. On the other hand, claims 12, 19, and 36 recite that the compressible layer has a nonuniform thickness in an uncompressed condition, and that in a compressed condition, forms and a uniform thickness portion. The claims therefore recite a compressible layer having thickness characteristics that are exactly opposite to the thickness characteristics of the retainer padding 26 of Evans. Thus, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 12, 14, 19, 23, 36, and 38 as being anticipated by Evans.

IV. Rejection of claims 4, 16-17, and 22 under 35 USC 103 (a) as being obvious over Kuevers.

Claims 4, 16-17, and 22 depend from claims 6, 12, and 19. For the reasons set forth above, Kuevers does not render these claims obvious because the claims recite a compressible layer having thickness characteristics that are exactly opposite to the thickness characteristics of the pad 25 taught by Kuevers. One would clearly not look to the teachings of Kuevers to conceive of a compressible layer having thickness characteristics exactly opposite to those of the pad 25 taught by Kuevers. Therefore, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 4, 16-17, and 22 as being obvious over Kuevers.

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## CONCLUSION

For the foregoing reasons, and in view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and withdrawal of the rejections of claims 2-9, 12-23 and 36-41. If there are any matters that may be handled by telephone, the Examiner is kindly invited to telephone the undersigned attorney at the number shown below.

Respectfully submitted,

BLACK LOWE & GRAHAM<sup>PLLC</sup>



Dale C. Barr

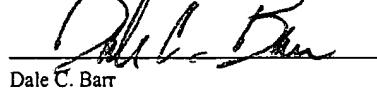
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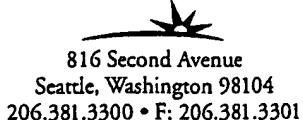
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